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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

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AZ CORP COMMISSION
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Arizona Corporation Commission

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IN THE MATTER OF THE APPLICATION OF
ARIZONA PUBLIC SERVICE COMPANY FOR A
HEARING TO DETERMINE THE FAIR VALUE
OF THE UTILITY PROPERTY OF THE
COMPANY FOR RATEMAKING PURPOSES, TO
FIX A JUST AND REASONABLE RATE OF
RETURN THEREON, TO APPROVE RATE
SCHEDULES DESIGNED TO DEVELOP SUCH
RETURN, AND TO AMEND DECISION NO.
67744.

DOCKET NO. E-01345A-05-0816

**RESPONSE TO APS' MOTION TO
PREVENT DISCLOSURE**

IN THE MATTER OF THE INQUIRY INTO THE
FREQUENCY OF UNPLANNED OUTAGES
DURING 2005 AT PALO VERDE NUCLEAR
GENERATING STATION, THE CAUSES OF THE
OUTAGES, THE PROCUREMENT OF
REPLACEMENT POWER AND THE IMPACT OF
THE OUTAGES ON ARIZONA PUBLIC
SERVICE COMPANY'S CUSTOMERS.

DOCKET NO. E-01345A-05-0826

IN THE MATTER OF THE AUDIT OF THE FUEL
AND PURCHASED POWER PRACTICES AND
COSTS OF THE ARIZONA PUBLIC SERVICE
COMPANY.

DOCKET NO. E-01345A-05-0827

Arizona Corporation Commission Staff ("Staff") hereby responds to the Motion to Prevent Disclosure filed by Arizona Public Service Company ("APS") on October 25, 2006. Staff believes that the proceedings necessary to dispose of this issue may unduly lengthen this proceeding without providing a corresponding public benefit. For that reason, Staff does not necessarily oppose APS' Motion, even though Staff may not agree with its underlying premise.

I. Facts

On October 10, 2006, which was the first day of the evidentiary hearing in the pending APS rate case, Commissioner Mayes asked APS to docket certain information related to a telephonic customer poll that APS had recently conducted. (Tr. at 100).¹ APS subsequently provided the poll to

¹ All transcript references are to the transcript of the evidentiary hearing in Docket No. E-01345A-05-0816.

1 the Commission under seal in accordance with the terms of an existing protective agreement. On
2 October 19, 2006, Commissioner Mayes acknowledged that she had received the confidential copy of
3 the customer poll, but requested that APS make the results of the poll publicly available. (Tr. at
4 1186). In response, APS claimed that the customer poll is confidential and stated that its
5 confidentiality should be maintained. (Tr. at 1306). APS also asked for permission to file a brief in
6 order to address the legal basis for the confidentiality of the customer poll. (Tr. at 1306-07). The
7 Administrative Law Judge granted that request, and APS has filed the present motion in compliance
8 with that ruling.

9 **II. The fact-specific inquiry that may be necessary in order to resolve this issue may**
10 **unduly lengthen this case without providing any evidentiary information**
11 **necessary to the record in this proceeding.**

12 Staff has not reached a conclusion regarding whether the APS customer poll qualifies for
13 treatment as a trade secret, but notes that pursuit of this inquiry is likely to require additional
14 Commission proceedings—proceedings which may substantially lengthen the pending rate case.
15 Whether a given compilation of information qualifies as a trade secret is a question of fact. In order
16 to conclude that APS' poll is not a trade secret, the Commission would need to conduct a suitable
17 proceeding that would both allow APS to present facts in support of its contentions and allow the
18 Commission to develop appropriate findings of fact in support of its eventual conclusions. This
19 effort could require the presentation of additional witnesses, which, in turn, could both lengthen and
20 complicate an already attenuated and complex proceeding. This result could have implications not
21 only for the requirements of the Timeclock Rule, but also for the rationing of Staff's extremely
22 limited resources.

23 These potential detriments should be balanced against any potential benefits that may be
24 gained from public disclosure of the customer poll. From Staff's perspective, this analysis of
25 benefits-versus-detriments should focus upon the issues that the Commission will be required to
26 examine in the pending rate case. Staff has filed extensive prefiled testimony in this case, and none
27 of that testimony discusses the customer poll. To the best of Staff's knowledge, the other parties'
28 extensive prefiled testimony is similarly silent. Nor have Staff or the other parties sought to

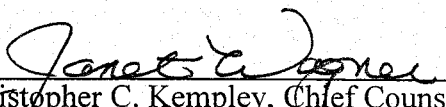
1 incorporate information about the customer poll into their respective cases since the poll's existence
2 was disclosed. From Staff's perspective, this silence indicates that the customer poll does not provide
3 information that the parties believe to be relevant to the issues in the pending rate case or useful to
4 their analyses of those issues.

5 Finally, it is important to note that Staff does not presume to speculate as to the benefits of
6 disclosure that the Commission may perceive; Staff offers these comments merely to provide Staff's
7 perspective on these issues. Staff's view is primarily influenced by our perception that a review of
8 the customer poll is not likely to be of evidentiary value in deciding the rate case, and Staff therefore
9 believes that the Commission should avoid any additional proceedings to assess the issue within the
10 context of the rate case proceedings.

11 **III. APS should be required to explain why the study cannot be redacted or**
12 **summarized in a manner that appropriately balances the competing interests.**

13 APS' Motion does not discuss whether or to what extent APS has considered redacting the
14 study or simply summarizing it so that it could be publicly docketed without disclosing any allegedly
15 confidential information. APS should be required to consider this option, which may allow all parties
16 to this matter to avoid further protracted proceedings.

17 RESPECTFULLY SUBMITTED this 3rd day of November, 2006.

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19 
20 Christopher C. Kempley, Chief Counsel
21 Janet Wagner, Senior Staff Counsel
22 Charles Hains, Attorney
23 Arizona Corporation Commission
24 1200 West Washington Street
25 Phoenix, Arizona 85007
26 (602) 542-3402

27 Original and 17 copies of the foregoing filed
28 this 3rd day of November, 2006, with:

26 Docket Control
27 Arizona Corporation Commission
28 1200 West Washington
Phoenix, AZ 85007

1 Copy of the foregoing mailed this
2 3rd day of November, 2006 to:

3 Deborah R. Scott
4 Kimberly A. Grouse
5 SNELL & WILMER
6 One Arizona Center
7 400 East Van Buren Street
8 Phoenix, AZ 85004-2202

9 Thomas L. Mumaw
10 Karilee S. Ramaley
11 PINNACLE WEST CAPITAL
12 CORPORATION
13 Post Office Box 53999, MS 8695
14 Phoenix, AZ 85072-3999

15 C. Webb Crockett
16 Patrick J. Black
17 FENNEMORE CRAIG, P.C.
18 3003 North Central Avenue, Suite 2600
19 Phoenix, AZ 85012-2913

20 Michelle Livengood
21 UniSource Energy Services
22 One South Church Street, Suite 200
23 Tucson, AZ 85702

24 Donna M. Bronski
25 Deputy City Attorney
26 City Attorney's Office
27 3939 North Drinkwater Boulevard
28 Scottsdale, AZ 85251

George Bien-Willner
3641 North 39th Avenue
Phoenix, AZ 85014

Michael W. Patten
J. Matthew Derstine
Laura E. Sixkiller
ROSHKA DEWULF & PATTEN, PLC
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, AZ 85004

Michael L. Kurtz
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202

Scott S. Wakefield
RUCO
1110 West Washington Street, Suite 220
Phoenix, AZ 85007

Lawrence V. Robertson, Jr.
Post Office Box 1448
Tubac, AZ 85646

Bill Murphy
Murphy Consulting
5401 North 25th Street
Phoenix, AZ 85016

Andrew W. Bettwy
Karen S. Haller
Assistants General Counsel
Legal Affairs Department
5241 Spring Mountain Road
Las Vegas, NV 89150

Amanda Ormond
The Ormond Group LLC
Southwest Representative
Interwest Energy Alliance
7650 South McClintock, Suite 103-282
Tempe, AZ 85284

Joseph Knauer, President
Jewish Community of Sedona
and the Verde Valley
100 Meadowlark Drive
Post Office Box 10242
Sedona, AZ 86339-8242

David C. Kennedy, Esq.
818 East Osborn Road, Suite 103
Phoenix, AZ 85014

1 S. David Childers, Esq.
2 LOW & CHILDERS
2999 North 44th Street, Suite 250
3 Phoenix, AZ 85018

4 Tracy Spoon
Sun City Taxpayers Association
5 12630 North 103rd Avenue, Suite 144
6 Sun City, AZ 85351

7 Tammie Woody
10825 West Laurie Lane
8 Peoria, AZ 85345

9 Douglas V. Fant
10 Law Offices of Douglas V. Fant
3655 West Anthem Drive, Suite A-109
11 Anthem, AZ 85086

12 Walter W. Meek, President
Arizona Utility Investors Association
13 2100 North Central Avenue, Suite 210
14 Phoenix, AZ 85004

15 Sein Seitz, President
Arizona Solar Energy Industries Association
16 3008 North Civic Center Plaza
17 Scottsdale, AZ 85251

18 Dan Austin
Comverge, Inc.
19 6509 West Frye Road, Suite 4
Chandler, AZ 85226

20
21 Timothy M. Hogan
Arizona Center for Law in the Public Interest
22 202 East McDowell Road, Suite 153
Phoenix, AZ 85004

23
24 Jay I. Moyes
Moyes Storey Ltd.
1850 North Central Avenue, Suite 110
25 Phoenix, AZ 85004
26

27 Roseann Osorio
28

Kenneth R. Saline, P.E.
K.R. Saline & Assoc., PLC
160 North Pasadena, Suite 101
Mesa, AZ 85201

Robert W. Geake
Vice President and General Counsel
Arizona Water Company
Post Office Box 29006
Phoenix, AZ 85038-9006

Lieutenant Colonel Karen S. White
Chief, Air Force Utility Litigation Team
AFLSA/JACL-ULT
139 Barnes Drive
Tyndall AFB, FL 32403

Greg Patterson
Arizona Competitive Power Alliance
916 West Adams Street, Suite 3
Phoenix, AZ 85007

Jim Nelson
12621 North 17th Place
Phoenix, AZ 85022

Barbara Klemstine
Brian Brumfield
Arizona Public Service
Post Office Box 53999, MS 9708
Phoenix, AZ 85072-3999

Jon Poston
AARP Electric Rate Project
6733 East Dale Lane
Cave Creek, AZ 85331

Coralette Hannon
AARP Government Relations & Advocacy
6705 Reedy Creek Road
Charlotte, NC 28215